AEROFLOT SOVIET AIRLINES

v.

EDDIE N.S. HO & HUU SEE HOOL

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[SUIT NO. C24-1166-86]
23 MARCH 1992

AGENCY: *Agreement to purchase motor vehicle - Failure to deliver on stipulated date - Summary judgment - Contention of first defendant he was merely agent of second defendant company - Significance of his signature on documents - Company not registered - Liability issue.*

The plaintiff had contracted to purchase from the 1st defendant a motor vehicle to be delivered before a certain date. The 1st defendant some time later requested and received a sum of RM34,600 as part payment and deposit towards the total purchase price of RM69,155. Amongst the exhibits tendered in Court were two documents, one stating a quotation of the price of the said vehicle and another being an "offer" to purchase. The 1st defendant had signed both documents in the name of the 2nd defendant.

The vehicle was not delivered on time and the plaintiff applied for summary judgment against the 1st defendant. A search conducted by the plaintiff at the Registry of Business had revealed that the 2nd defendant company had not been registered.

The plaintiff appealed against the dismissal of the O. 14 application by the Senior Assistant Registrar.

Held:

[1] When a person signed a contract which cited his own name as party thereto without any qualification contained anywhere in the contract indicative of his acting as an agent for any third person or principal, then he must be presumed to have contracted personally, and to be liable personally.

[2] The purported principal did not exist and an agent who signs on behalf of a non-entity is personally liable on it.

[3] The 1st defendant was giving false evidence in his affidavit when he referred to the 2nd defendant as his principal when in actual fact the principal did not exist.

[Appeal allowed with costs.]

Cases referred to:
K.T.S. Sdn. Bhd. v. Foong Seng Fuat Sawmill Sdn. Bhd. [1987] CLJ (Rep) 700 ***(foll)***
Kelner v. Baxter & Ors. [1886] Common Pleas 174 ***(foll)***
Hersom v. Bernett [1955] 1 QB 98 ***(foll)***

Other source referred to:
Indian Contract Act and Specific Relief Acts, Pollock & Mulla, 10th Edn., p. 911

Legislation referred to:
Rules of the High Court 1980, O. 14

For the plaintiff - Simon Ho; M/s. Ho Loke & Koh
For the defendant - G. Pathmanathan; M/s. Megat Najmuddin Leong & Co.

JUDGMENT

Zakaria Yatim J:

This was an appeal by the plaintiff against the decision of the Senior Assistant Registrar given on 18 May 1987 dismissing the plaintiff's application for summary judgment against the first defendant.

The plaintiff's claim was that sometime in August 1985 the plaintiff agreed to purchase from the first defendant a Toyota Coster Bus Model BUS-M-RB20-MOR (the vehicle) for a total purchase price of RM69,155 on the condition that the said vehicle be delivered to the plaintiff on or before 1 November 1985. On 16 November 1985, the plaintiff obtained an approval permit from the Customs and Excise Department allowing the plaintiff to import the said vehicle on or before 15 November 1985. At the first defendant's request the plaintiff paid the second defendant a sum of RM34,600 by way of a banker's cheque *vide* MBB Banker's Cheque No. 082965 dated 3 September 1985 as deposit and part payment towards the purchase price of the vehicle. The plaintiff alleged that the first defendant, in breach of the agreement, failed to import and deliver the vehicle to the plaintiff by 15 November 1985. The plaintiff through its solicitors, by a letter dated 14 January 1986 determined the agreement and demanded from the first and second defendants the sum of RM34,600.

In his amended defence, the first defendant said that at all material times he was acting as agent for the second defendant and/or one Ken Unitrade. The first defendant admitted requesting the plaintiff to pay the second defendant 50% of the purchase price of the vehicle but contended that at all material times he was acting as agent of Ken Marketing Company and/or the second defendant. He averred that the plaintiff entered into contract with Ken Marketing Company. He denied that there was any contract entered into between him and the plaintiff. He further averred that he was not personally liable for any act or default of his principal.

The affidavit (enclosure 13) in support of the plaintiff's application for summary judgment, exhibited a number of documents. The first document is a quotation for the price of the said vehicle addressed to the plaintiff. The quotation is in the letter head of Ken Unitrade of No. 4A, Taman Evergreen, 4th Mile, Jalan Kelang, Kuala Lumpur. The quotation was signed by the first defendant in the name of Ken Unitrade. The second document is an "offer" to purchase. The document *inter alia* states:

> I/We Aeroflot Soviet Airlines of Grd Floor, Wisma Tong Ah, Jalan Parry, K.L. Tel. Office/ Home No. 2613331 (hereinafter called 'the buyer') hereby confirm having purchased this day from Ken Unitrade, Tmn. Evergreen Kuala Lumpur, (Hereinafter called 'the sellers') the undermentioned goods at the prices and on the terms and conditions hereinafter appearing and subject to the conditions of sales printed on the back hereof.

The document was signed by the customer (the plaintiff) and the sales manager of Ken Unitrade. The signature of the person who signed on behalf of Ken Unitrade is identical to that found in the first document.

According to the plaintiff, a search was made at the Registry of Business and it was revealed that Ken Unitrade was not registered at the Registry of Business. The report of the Registrar of Business was that Ken Unitrade **"tidak didaftarkan".**

In my view the first defendant was personally liable because he signed both the documents referred to earlier. He could not have signed it on behalf of Ken Unitrade because Ken Unitrade did not exist at all. He therefore signed the documents in his own name. In *K.T.S*

Sendirian Berhad v. Foong Seng Fuat Sawmill Sdn. Bhd. & Anor. [1987] CLJ (Rep) 700, the Court decided that when a person signed a contract which cited his own name as party thereto without any qualification contained anywhere in the contract indicative of his acting as an agent for any third person or principal, then he must be presumed to have contracted personally, and to be liable personally.

The first defendant could not be regarded as an agent because his purported principal, Ken Unitrade did not exist. The second defendant or Ken Marketing Company could not be regarded as his principal. When a contract is signed by one who professes to be signing "as agent", but who has no principal existing at the time, he is personally liable on it, and a stranger cannot relieve him from that liability. See *Kelner v. Baxter & Ors.* [1886] Common Pleas 174 Pollock & Mulla, *Indian Contract Act and Specific Relief Acts* 10th Edn. at p. 911 states as follows:

> An agent who signs a contract in his own name without qualification, though known to be an agent, is understood to contract personally unless a contrary intention plainly appears from the body of the instrument, and the mere description of him as an agent, whether as part of the signature or in the body of the contract, is not sufficient indication of a contrary intention to discharge him from the liability incurred by reason of the unqualified signature. On the other hand, if words are added to the signature indicating that he signs 'as an agent,' or on account or behalf of the principal, he is considered not to contract personally, unless it plainly appears from the body of the contract, notwithstanding the qualified signature, that he intended to make himself a party.

In his affidavit affirmed on 2 May 1987, the first defendant said that he was agent for Ken Unitrade. In para. 2 of his amended statement of defence he said that he was agent "for the second defendant and/or one Ken Unitrade." In para. 5 of the same amended statement of defence he said that he was "acting as agent of the Ken Marketing Company and/or the second defendant."

Since Ken Unitrade did not exist at all, the first defendant was giving a false evidence in his affidavit affirmed on 2 May 1987. By giving a false evidence the first defendant could not refer to the second defendant or Ken Marketing Company as his principal. In *Hersom v. Bernett*, [1955] 1 QB 98 Roxburgh J, in his judgment at p. 103 said:

> ... it seems to me that a fundamental principle of justice requires that a defendant who has given false evidence that his principal was X should not be heard to say through his Counsel in argument that his principal may have been somebody else, but must thereafter be treated as having no principal; or, in other words, as being himself the principal.

For the reasons stated above I was satisfied that this was a proper case for summary judgment. I accordingly allowed the appeal with costs and gave judgment for the plaintiff as prayed in the statement of claim against the first defendant.

Also found at [1992] 3 CLJ 1709